



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,802	02/12/2004	Sheng-Ping (Samuel) Zhong	03-235	5369

27774 7590 06/05/2007
MAYER & WILLIAMS PC
251 NORTH AVENUE WEST
2ND FLOOR
WESTFIELD, NJ 07090

EXAMINER

AHMED, HASAN SYED

ART UNIT	PAPER NUMBER
----------	--------------

1615

MAIL DATE	DELIVERY MODE
-----------	---------------

06/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/777,802	Applicant(s) ZHONG, SHENG-PING (SAMUEL)	
	Examiner Hasan S. Ahmed	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 4-16, 20, 24 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 17-19, 21-23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/17/04, 10/14/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of applicant's: (a) IDS, which was filed on 17 June 2004; (b) supplemental IDS, which was filed on 14 October 2005; and (c) response to restriction requirement, which was filed on 12 March 2007

* * * * *

Election/Restrictions

Applicant's election with traverse of Group I (including election of claims 2, 19, and 23) in the reply filed on 12 March 2007 is acknowledged. The traversal is on the grounds that the groups are related. This is not found persuasive because they are unconnected in design (each group has elements which the other does not have), operation (each group has a different pharmacokinetic profile) and effect (each group has a different pharmacological profile). Additionally, applicants argue that Group I should include claims 1-24 because claims 2-24 depend from claim 1. This is not persuasive because claim 1 is a linking claim that links inventions I-IV.

The requirement is still deemed proper and is therefore made FINAL.

Claims 4-16, 20, 24, and 26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12 March 2007.

* * * * *

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 2, 17, 18, 19, 21, 22, 23, and 25 rejected under 35 U.S.C. 102(a) as being anticipated by WO 2003/026532 ("Weber").

Weber discloses a medical article comprising a release region (see page 2, lines 22-28), further comprising:

- the polymeric carrier comprising a first polymer of instant claim 1 (see page 8, lines 5-15);
- the drug loaded nanoparticles dispersed within the polymeric carrier of instant claim 1 (see page 11, lines 14-16);
- the layered silicate material (phyllosilicate) of instant claim 1 (see page 9, line 4);
- the hydrophilic therapeutic agent of instant claim 2 (see page 11, line 17 – page 12, line 6; e.g. acetylsalicylic acid);
- the hydrophobic polymer of instant claim 2 (see page 8, lines 5-15; e.g. polyolefin block copolymer);
- the disposal over at least a portion of the medical article substrate of instant claim 17 (see figure 1);

Art Unit: 1615

- the coronary or peripheral vasculature implantable or insertable medical device of instant claim 19 (see page 20, lines 16-21);
- the catheter of instant claim 21 (see page 20, line 19);
- the antithrombotic agent of instant claim 22 (see page 11, line 18);
- the smectite silicate material of instant claim 23 (see page 9, line 4); and
- the method of instant claim 25 (see page 6, lines 3-15).

* * * * *

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in view of U.S. Application No. 2005/0149175 ("Hunter").

Weber teaches a medical article comprising a release region (see above). The disclosed article comprises the polyolefin-polyvinylaromatic block copolymer of instant claim 3 (see page 8, lines 5-15).

Weber explains that the disclosed invention, "...advantageously provides the opportunity to provide a variation in one or more properties within one or more dimensions of the inventive device than can be achieved in medical devices not comprising nanomaterials." See page 18, lines 25-27.

Weber differs from the instant application in that it does not teach halofuginone as a therapeutic agent. However, use of halofuginone as a therapeutic agent in vascular medical devices was well known in the art at the time the instant application was filed, as evinced by Hunter (see paragraph 0415).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to disclose a vascular medical device comprising a release region, further comprising a polymeric carrier and nanoparticles comprising halofuginone, as taught by Weber in view of Hunter. One of ordinary skill in the art at the time the invention was made would have been motivated to make such a composition because it provides more flexibility in properties than medical devices not comprising nanomaterials, as explained by Weber.

☆

Correspondence


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hasan S. Ahmed whose telephone number is 571-272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Z


MICHAEL P. WOODWARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600